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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,871	03/18/2004	Philip Russel James Smith	66347-104	5458
68804	7590	09/05/2008	EXAMINER	
JOHN P. DE LUCA 17420 RYEFIELD CT. DICKERSON, MD 20842			RAMDHANE, BOBBY	
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			1797	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/802,871

**Applicant(s)**

SMITH ET AL.

**Examiner**

BOBBY RAMDHANIE

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Remarks, filed 06/16/2008, with respect to the rejection(s) of claim(s) 1-13 under 102 & 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Verwohlt et al (US5514343). See rejections below.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 10, 11, 13, & 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Verwohlt et al (US5514343).
4. Applicants' claims are toward a system.
5. Regarding Claims 1, 6, 10, 11, 13, & 14, Verwohlt et al discloses in combination a tube for storing micro-litre volumes (See Figure 1 Item 16) and a multi-well plate having a bottom surface and through bores extending to said surface, said through bores for receiving said tube in a corresponding one of the through bores in said multi-well plate (See Figure 1 Item 10), the tube being open at one end and adapted to engage the bottom surface of the a multi-well plate, the tube comprising: A). A body portion of substantially square cross section (See Column 2 lines 12-14); B). A shoulder

portion at said one end of the body portion and providing the open end of the tube, the cross section of the shoulder portion being greater than that of the body portion (See Figure 4 Item 21); and a formation providing a connector portion at the other end of the tube sized for snap fit engagement in the through, bore with the bottom surface of the multi-well plate (See Figure 4 Item 22 & Column 3 lines 39-48).

6. Additional Discloses Included: Claim 6: Wherein the body and shoulder portions are formed separately from the snap-fit connector portion (See Figure 1 Item 14; which is also a snap-fit connector portion and formed separated from the body and shoulder portions. Alternatively, Claim 6 is anticipated by Verwohlt et al as a product by process claim. The final product is the same as the one claimed in the instant application); Claim 10: Wherein the body portion and snap fit connector portion are co-moulded (See Figure 4 Items 23 & 26 & Column 4 lines 48-65). Claim 11: In combination, a tube for storing fluid and a multi-well plate having a bottom surface and through bores extending to said surface, said through bores for receiving said tube in a corresponding one of the through bores in said multi-well plate (See Verwohlt et al Figure 1 Item 10), the tube being open at one end and adapted to engage the bottom surface of a multi-well plate having, the tube comprising: a body portion of substantially square cross section; a shoulder portion at said one end of the body portion and providing the open end of the tube, the cross section of the shoulder portion being greater than that of the body portion; and a flared connector portion at the closed end of the tube sized for snap fit engagement in the through the-bore with the bottom surface of the multi-well plate (See Column 3 lines 39-48), said flared connector portion having an identification code

provided thereon (See Column 3 lines 28-35); Claim 13: In combination, a tube for storing micro-litre volumes and a multi-well plate having an upper surface and a bottom surface and through bores extending between the upper and bottom surfaces, said through bores for receiving said tube in a corresponding one of the through bores in said multi-well plate (See Figure 1 Item 10), the tube comprising: an upper body portion of substantially square cross section having an open upper end; a lower body portion having a closed bottom end and a reduced cross section sized for entering the corresponding through bore; a shoulder portion located between the upper body portion and the lower body portion, the cross section of the shoulder portion being greater than that of the lower body portion for engaging the upper surface of the plate (See Figure 4 Item 16); and a formation disposed at the closed bottom end of the tube, said formation having an enlarged portion having a diameter larger than the lower body portion of the tube, whereby said formation extends beyond the lower surface of the plate to provide a connector for snap fit engagement with said lower surface (See Column 3 lines 39-48); Claim 14: The combination of claim 1 wherein the formation at the closed bottom end of the tube is larger than the opening at the bottom of the through bore in order to effect the snap fit engagement with the lower surface (see Column 3 lines 39-48).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Verwohlt et al in view of Helger et al in view of Stanchfield.

10. Applicants' claims are toward a combination.

11. Regarding Claims 2-5, Verwohlt et al discloses the tube according to claim 1.

Verwohlt et al does not disclose that the closure member is a foil cap, self-sealing member, or a split septum. Helger et al discloses the closure member comprising a foil cap (Column 2 lines 30-50) and Stanchfield discloses the closure member comprises a self sealing member and a split septum (Column 11 lines 25-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Verwohlt et al with Helger et al and Stanchfield because according to Helger et al, using a foil cap can be advantageous when the sample of interest needs to be freeze dried and must be sealed for preservation reasons, sample containers sealed with foil caps can be removed or punctured to remove the sample at a later time (See Column 4 lines 50-60 and Column 5 lines 0-5); and according to Stanchfield et al the rubber materials are chemical resistant and are well known for forming septa for sealing round bottom

flaks and Erlenmeyer flasks and other containers used by researchers (See Column 11 lines 29-40).

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verwohlt et al.

13. Applicants' claim is toward a combination.

14. Regarding Claim 7, Verwohlt et al discloses the combination according to Claim 1, except wherein the snap fit connector portion has a dot code on it. Verwohlt et al does disclose that markings, including dots may be used as identification on the radial flange (See Column 3 lines 28-38). It would have bee obvious to one of ordinary skill in the art at the time the invention was made to place the dot code on the connector portion on the snap fit connector portion because this would prevent the dots from being removed from the flange during handling by a technician.

15. Claims 7, 8, 9, & 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Verwohlt et al in view of Day.

16. Applicants' claims are toward a combination.

17. Regarding Claims 7, 8, 9, & 12, Verwohlt et al discloses the combination as claimed in Claim 6, except wherein the snap fit connector portion has a dot code on it. Day discloses a combination of a cluster tube which is formed from two parts, and wherein the dot code is placed in position that is different than the flange in Verwohlt et al (See Day [0026-0028]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Verwohlt et al with Day because both of

these references deal with storing micro-liter sample volumes in cluster-tube type arrangements.

18. Additional Disclosures Included: Claim 8: Wherein the body and shoulder portions are formed from a translucent or transparent material (See Verwohlt et al Column 4 lines 48-52 & Day [0074]) Claim 9: A tube according to claim 8, further comprising a spigot at the interface between the body portion and the snap fit connector portion (See Day [0096]); Claim 12: A tube according to claim 11 (See Verwohlt et al rejections above), wherein the connector and body portions are formed separately from different materials (See Day [0074] [0094]).

### ***Telephonic Inquiries***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY RAMDHANIE whose telephone number is (571)270-3240. The examiner can normally be reached on Mon-Fri 8-5 (Alt Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bobby Ramdhanie, Ph.D./  
Examiner, Art Unit 1797  
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/Walter D. Griffin/  
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